IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 983 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NOOR AHMED HAMJABHAI SHAIKH - Appellant(s)
Versus
A'BAD MUNICIPAL CORPORATION & 1 - Defendant(s)

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Appearance :
MR GIRISH D BHATT for Appellant(s) : 1,
MR PRASHANT G DESAI for Defendant(s) : 1,
(MR GN DESAI) for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/08/2006

ORAL JUDGMENT

By way of this appeal, the appellant herein (hereinafter referred to as “the plaintiff”) has challenged the judgment and decree passed by the leaned City Civil Court at Ahmedabad dated 29th August, 1989

passed in Civil Suit No.1269 of 1987 in dismissing the same. The plaintiff filed the aforesaid suit in the learned City Civil Court at Ahmedabad against the Ahmedabad Municipal Corporation as well as defendant No.2 for permanent injunction restraining defendant No.1 – Ahmedabad Municipal Corporation from allotting lorry stand at Sarangpur to defendant No.2 where he was claiming to be doing the business. He also further prayed for permanent injunction restraining the defendants from disturbing his possession towards the place where he was having his lorry stand. It was also further prayed for a declaration that defendant No.1 has no right to grant any such license in respect of that stand to defendant No.2 and that defendant No.2 has no right to occupy the said place being occupied by the plaintiff and hence any resolution that the first defendant may have passed to that effect be declared to be illegal, void and not binding to the plaintiff.

2. The suit was resisted by defendant No.1 by filing written statement at Exh-28. It was contended on behalf of the Corporation that the place occupied by the plaintiff was street land and he cannot be permitted to do any business by keeping his lorry as stationary and

that would amount to encroachment. It was also further contended that the plaintiff was given only a hawker's license and the plaintiff was never given any license to put lorry as stationary and therefore, he cannot claim to do any stationary business at the place claimed by him.

The suit was also resisted by defendant No.2 by filing written statement at Exh-33. It was contended by defendant No.2 that as the place, where he was doing the business, has gone under road-lines, he was given the present place, which was occupied by the plaintiff, as an affected person. It was also submitted that the plaintiff was having a hawkers license and he has not been allotted any stationary license and therefore, he has no right to continue on the said place and/or to do the business at the same place and therefore, it was requested to dismiss the suit.

3. The learned trial Court raised the issues at Exh-52/A. The plaintiff himself himself was examined at Exh-76. He also examined one Mohmedbhai Jamalbhai at Exh-94. Defendant No.1 has not lead any oral evidence and defendant No.2 himself was examined at Exh-101. The hawker's license was produced at Exh-56. On appreciation of the evidences and considering the oral as well as

documentary evidences, the learned trial Court held that as the plaintiff was given only hawker's license and the plaintiff was not given any stationary license, he has no right to do the business on the same place by putting the lorry stand. The learned trial Court further held that even the plaintiff has also failed to prove his possession since last more than 10 years by virtue of hawker's license. So far as the relief against defendant No.2 is concerned, considering the validity period of the license in favour of defendant No.2 and considering the fact that the said license has expired long back and it was nothing on record to show that the same was further extended, the learned trial Court did not pass any order by observing that the said question does not survive and accordingly the learned trial Court dismissed the suit. Being aggrieved and dissatisfied with the same, the plaintiff has preferred the present appeal.

4. Shri GD Bhatt, learned advocate appearing on behalf of the plaintiff has vehemently submitted that the learned trial Court has materially erred in holding that the plaintiff failed to prove that he was in possession of the suit premises since more than 10 years by virtue of hawker's license. He has also further submitted that

the learned trial Court has also further erred in finding that the plaintiff failed to prove that resolution dated 20-11-1986 of the first defendant sanctioning allotment of the suit site to the 2nd defendant was illegal and arbitrary.

5. On the other hand, Shri Asthawadi, learned advocate appearing on behalf of defendant No.1 – Ahmedabad Municipal Corporation has submitted that in view of the fact that the plaintiff was given only hawker's license and was not given any stationary license, the plaintiff cannot do the business by keeping the lorry as stationary. As he was not having any stationary license, he has no right to claim to continue with the possession and accordingly, the learned trial Court has rightly refused the declaration and permanent injunction.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is not in dispute that the plaintiff was given hawker's license and was never given any stationary license. Nothing is on record to show that the plaintiff was ever given any stationary license. On considering the

evidence and the deposition of the plaintiff himself that the license was granted to him was only as a hawker's and therefore, it is rightly held by the learned trial Court that the plaintiff was not in legal occupation of the suit site. Subsequently, the learned trial Court has rightly held that he cannot become entitle to do the business by remaining stationary at any place. Shri Bhatt, learned advocate appearing on behalf of the plaintiff is not in a position to satisfy this Court with regard to any right in favour of the plaintiff entitling him to do the business by remaining stationary at any place. In view of the above, it cannot be said that the learned trial Court has committed any error in dismissing the suit. In absence of any right in favour of the plaintiff to do the business by putting the lorry as stationary at a particular place, relief as prayed for, cannot be granted.

8. For the reasons as stated above, the appeal fails and is accordingly dismissed. No costs. Ad interim relief if any stands vacated forthwith.

(M.R.SHAH,J.)

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